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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SAM HIRBOD ET AL.,

Cross-complainants and Appellants,

v.

FARID AKBARPOUR ET AL.,

Cross-defendants and Respondents.

A119838

(Alameda County  
Super. Ct. No. RG05202705)

Appellants appeal an order dismissing its cross-complaint without qualification, where only some of the cross-defendants had sought dismissal. We construe the order to dismiss the cross-claims only against the moving defendants and affirm.

BACKGROUND

In March 2005, Jenkin and Wendy Richard and Richard Enterprises, Inc. (Plaintiffs) filed a complaint against Sam Hirbod, Bedrock Oil, Inc. (formerly known as Hirbod Enterprises), and F.F.S. Global, LLC (hereafter collectively, Hirbod Defendants), and also against Mission-Bishop Real Estate, Inc. and Mike and Owens Hoady (hereafter collectively, Mission-Bishop Defendants). Plaintiffs later amended the complaint to name Alan Bishop as an additional defendant (hereafter included among Mission-Bishop Defendants).

In July 2005, the trial court issued an order determining that the Hirbod Defendants had entered into a good faith settlement with Plaintiffs pursuant to Code of

Civil Procedure section 877.6, subdivision (a)(1). The Hirbod Defendants then filed a cross-complaint against the Mission-Bishop Defendants and against Farid and Fraidon Akbarpour. The court permitted amendments to the cross-complaint and in June 2007 a Fourth Amended Cross-Complaint was filed naming the same cross-defendants.

In August 2007, the trial court determined that the Mission-Bishop Defendants had entered into a good faith settlement with Plaintiffs pursuant to Code of Civil Procedure section 877.6, subdivision (a)(1). In September, the Mission-Bishop Defendants moved to dismiss the Hirbod Defendants' cross-complaint "as against" them. Specifically, the notice of motion and motion notified the Hirbod Defendants that "[the Mission-Bishop Defendants] will and hereby do move the Court for dismissal of the Fourth Amended Cross-Complaint of [the Hirbod Defendants] as against these moving parties," and the conclusion of the Mission-Bishop Defendants' points and authorities stated, "the entire Fourth Amended Cross-Complaint should be dismissed as against [the Mission-Bishop Defendants]." The attorneys representing the Mission-Bishop Defendants did not purport to represent the Akbarpours and, even though the motion was served on Farid Akbarpour's counsel and on Fraidon Akbarpour (who was proceeding pro se), insofar as the appellate record discloses neither of the Akbarpours participated in proceedings on the motion.

The court signed and filed a written order granting the motion to dismiss on September 25, 2007. The order first states that "the motion by [the Mission-Bishop Defendants] to dismiss the Fourth Amended Cross-Complaint of [the Hirbod Defendants] is GRANTED." After providing reasons for the ruling, the order concludes, "The Fourth Amended Cross-Complaint is hereby DISMISSED."

On October 3, 2007, the court filed a judgment providing that the "Fourth Amended Cross-Complaint filed by [the Hirbod Defendants] is DISMISSED with prejudice *as to* [the Mission-Bishop Defendants]" and that the Hirbod Defendants "shall

take nothing by their Fourth Amended Cross-Complaint *against* [the Mission-Bishop Defendants].” (Italics added.)

The Hirbod Defendants appealed from both the September 25, 2007 order granting the motion to dismiss and from the October 3 judgment. On February 1, 2008, however, they requested dismissal of the appeal and this court issued a remittitur. Two weeks later, the Hirbod Defendants filed a motion for recall of the remittitur and reinstatement of the appeal as against the Akbarpours. They explained that their request for dismissal was filed since they had reached a settlement agreement with the Mission-Bishop Defendants, but mistakenly failed to limit the request to the Mission-Bishop Defendants. This court granted the motion to recall, which was uncontested. We recalled the remittitur and issued a partial remittitur stating that the dismissal of the appeal had become final as to the Mission-Bishop Defendants only. The Akbarpours have not filed respondents’ briefs even though it appears they have received notice of the appeal.

#### DISCUSSION

The Hirbod Defendants correctly point out that the September 25, 2007 order granting the motion to dismiss was a final appealable order to the extent it effected an involuntary dismissal. (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 328, fn. 1; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2008) ¶ 2:136 at p. 2-72.2 (rev. #1 2008).) They complain that the order dismissed the entire Fourth Amended Cross-Complaint, rather than only dismissing it as to the Mission-Bishop Defendants who brought the motion to dismiss.

Reasonably construed, the order applies only to the Mission-Bishop Defendants. The order clearly recites that it is a ruling on the motion brought by the Mission-Bishop Defendants. It mentions only the cross-claims against the Mission-Bishop Defendants, which were also the only substantively argued claims at the hearing on the motion to dismiss. Furthermore, the later-entered judgment, which states that it “follows” the

September 25, 2007 order, provides that the Fourth Amended Cross-Complaint was dismissed only as to those defendants.

Considering the foregoing circumstances,<sup>1</sup> we construe the trial court's September 25, 2007 order as dismissing the Fourth Amended Cross-Complaint only as to the Mission-Bishop Defendants. The cross-complaint has not been dismissed as to the Akbarpours.

#### DISPOSITION

We construe the September 25, 2007 order to dismiss the Fourth Amended Cross-Complaint only as to the claims against Mission-Bishop Real Estate, Inc., Mike Hoady, Owens Hoady, and Alan Bishop. So construed, the order is affirmed. The October 3, 2007 judgment is also affirmed. Appellants shall bear their own costs.

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<sup>1</sup> We note further that the Register of Actions identifies the September 25, 2007 order "Motion to Dismiss— Granted As to PARTY."

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STEVENS, J.\*

We concur.

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SIMONS, ACTING P.J.

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NEEDHAM, J.

\* Retired Associate Justice of the Court of Appeal, First Appellate District, Division Five, assigned by the Chief Justice pursuant to art. VI, § 6 of the California Constitution.

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